EDITOR'S NOTE

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SUPREME COURT OF THE UNITED STATES

CARMEN REOGAS, et al,	)	
	)	
Petitioners,	)	(3)
	)	
v.	)	SUPREME COURT NO. 97-1988
	)	
JIMMY GRAY, et al,	)	
	)	
Respondents.	)	

OPPOSITION TO NOTICE OF BANKRUPTCY AND OPPOSITION TO SUGGESTION OF STAY

Come now plaintiffs Carmen Reogas, Karen Howard, and Wanda Gibson, and respectfully oppose the Notice of Bankruptcy and Suggestion of Stay filed by respondent Monarch Tile, Inc.

Monarch Tile, Inc. has filed a Chapter 11 Bankruptcy Petition having Case No. 97-84828-JAC-11, however, petitioners have never been served with any notice of such bankruptcy petition, they were not, to the knowledge of petitioners listed as creditors in the bankruptcy proceeding, and therefore the automatic stay should have no application to petitioners herein, or to these proceedings.

The existence of this bankruptcy petition was brought to the attention of the Eleventh Circuit Court of Appeals by way of a Petition for Rehearing, a copy of which is attached hereto as Exhibit "A" and is incorporated by reference as though fully set out herein, however, the Court of Appeals proceeded with this matter without protest from defendant Monarch Tile, Inc. and obviously the Eleventh Circuit Court of Appeals concluded that the automatic stay was not applicable since petitioners were not parties to said bankruptcy proceeding.

Defendant Monarch Tile, Inc., has therefore waived the

automatic stay, or is judicially estopped from asserting it, or is barred by the doctrine of "Inconsistent Positions" from asserting it.

THEREFORE, since respondent Monarch Tile, Inc. chose not to list petitioners in the Chapter 11 Bankruptcy Petition, and chose not to assert the stay while this matter was pending before the Eleventh Circuit Court of Appeals respondent Monarch Tile, Inc. should not get the benefit of the automatic stay at this late hour as to these petitioners.

J. Wilson Mitchell (MIT016)
Attorney for petitioners

YATES, MITCHELL, BERNAUER,
WINBORN & MORTON
P. O. Drawer 10
Florence, Alabama 35631
(256) 764-0582

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing upon opposing counsel by placing a copy thereof in the U. S. Mail addressed to said counsel with sufficient postage on this the 1 day of July, 1998.

J. Wilson Mitchell

UNITED STATES COURT OF APPEALS
ELEVENTH CIRCUIT

CARMEN REOGAS, et al,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	APPELLATE NO. 96-6767
	)	DISTRICT COURT CASE NO. CV-94-B-2216-NW
JIMMY GRAY, AND MONARCH TILE, INC.,	)	
	)	
	)	
Defendants.	)	

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA

PETITION FOR REHEARING OF APPELLANTS

J. WILSON MITCHELL
418-90-8920
YATES, MITCHELL, BERNAUER, WINBORN & MORTON
P. O. Drawer 10
Florence, Alabama 35631
205-764-0582

EXHIBIT A

Appellate No. 96-6767

Carmen Reogas, et al v. Jimmy Gray, et al

CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

Trial Judge - Honorable Sharon Lovelace Blackburn
United States District Judge for the Northern District of Alabama

Attorney's -

Lindsey Mussleman Davis
Holt, McKenzie, Holt & Mussleman
215 West Dr. Hicks Blvd.
P. O. Box 358
Florence, Alabama 35631
Attorney for Defendant Jimmy Gray

Wanda Gibson - Plaintiff

Jimmy Gray - Defendant

Karen Howard - Plaintiff

Allan G. King
Littler, Mendleson, Fastiff, Tichy & Matheson
300 Crescent Court
Suite 600
Dallas, Texas 75201
Attorney for Defendant Monarch Tile, Inc.

J. Wilson Mitchell
Yates, Mitchell, Bernauer, Winborn & Morton
P. O. Drawer 10
Florence, Alabama 35631
Attorney for plaintiffs

Monarch Tile, Inc. - Defendant

Carmen Reogas - Plaintiff

Vernon L. Wells, II
David Walston
Walston, Stabler, Wells, Anderson & Bains
P. O. Box 830642
Birmingham, Alabama 35283-0642
Attorney for defendant Monarch Tile, Inc.

CERTIFICATE OF TYPE SIZE AND STYLE

The size and style of type comprising this Petition is Elite with ten (10) characters per inch.

STATEMENT REGARDING ORAL ARGUMENT

The issues presented in this Petition for Rehearing should not require oral argument, but rather should be capable of resolution based upon the record herein, and the applicable law, and therefore plaintiffs/appellants do not request oral argument.

J. Wilson Mitchell
Attorney for plaintiffs/
appellants

418-90-8920
YATES, MITCHELL, BERNAUER,
WINBORN & MORTON
P. O. Drawer 10
Florence, Alabama 35631

ARGUMENT

Come now plaintiffs/appellants in this sexual harassment action, and respectfully move the Court for a rehearing.

In support of this petition it will be shown unto the Court that although plaintiffs/appellants have never received actual notice of bankruptcy concerning defendant/appellee Monarch Tile, Inc., it has come to the attention of counsel for plaintiffs/appellants through local news media that Monarch Tile, Inc. did in fact file a Chapter 11 Bankruptcy Petition in the Northern District of Alabama on or about December 16, 1997 having Case No. 9784828-JAC-11.

Notwithstanding the fact that no actual notice was sent to counsel for plaintiffs/appellants, the automatic stay provided under 11 U.S.C. Section 362 (a) (1) should preclude the entry of the affirmance in this action since such a bankruptcy petition operates as a stay applicable to all entities of "(1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title . . ."

Therefore, the automatic stay applicable to the Chapter 11 filing by defendant Monarch Tile, Inc. should preclude the entry of the January 6, 1998 affirmance in this action since it came after the Chapter 11 bankruptcy petition had been filed by defendant Monarch Tile, Inc. on or about December 16, 1997.

Additionally, a rehearing is requested in light of the fact that counsel for plaintiffs/appellants was ordered to attend oral

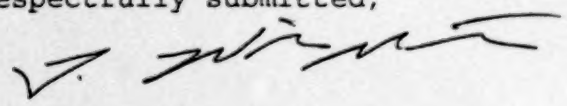
argument before this Honorable Court during which argument it was made clear that the issues presented in the Reogas case, are the same issues as faced the Court in the case of Faragher v. City of Boca Raton, 94-4878, which case was before the United States Court of Appeals, Eleventh Circuit as to which an opinion was entered on or about April 15, 1997, and amended on April 28, 1997. The Faragher case is now before the United States Supreme Court since it is the understanding of undersigned counsel that a Petition for Writ of Certiorari has been granted, and according to news sources, an opinion is to be issued sometime this summer.

Since the issues in the Faragher case are substantially the same as the issues in the Reogas case, those being whether defendants could be liable under Title VII for hostile environment sexual harassment regardless of actual or constructive notice of that harassment and whether defendants knew or should have known of the hostile environment sexual harassment, it would seem to be in the interest of substantial justice to wait to enter judgment in the Reogas case until after the United States Supreme Court has issued a final decision in the Faragher case which should resolve the conflict among the Circuits on the issues involved in said appeals, and which issues are directly involved in the Reogas case.

THEREFORE, this Honorable Court is respectfully requested to grant the Petition for Rehearing upon the grounds of the automatic stay applicable to defendant Monarch Tile, Inc., and further to grant rehearing, and await a final pronouncement from the United States Supreme Court concerning Faragher v. City of Boca Raton,

which final pronouncement by the United States Supreme Court will have direct applicability to the Reogas case, and awaiting same would therefore best serve the interest of substantial justice and judicial economy.

Respectfully submitted,



J. Wilson Mitchell
Attorney for plaintiffs/
appellants
Carmen Reogas, Wanda Gibson
and Karen Howard

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CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing upon opposing counsel by placing a copy thereof in the U.S. Mail addressed to said counsel with sufficient postage prepaid on this the 26th day of January, 1997.

J. Wilson Mitchell

LITTLER MENDELSON

Allan G. King
Direct Dial: (214) 880-8106
Email: AGKing@littler.com

June 29, 1998

VIA FEDERAL EXPRESS

ORIGINAL

William K. Suter, Esq., Chief Clerk
Supreme Court of the United States
1 First Street N.E.
Washington, D.C. 20543

Re: Docket No. 97-1988
Reogas, et al. v. Jimmy Gray, Monarch Tile, Inc., and Aluminum, Brick & Glass Workers International Union Local No. 511

Dear Mr. Suter:

Enclosed are an original and ten copies of a Notice of Bankruptcy and Suggestion of Stay of Respondent Monarch Tile, Inc. in the above-referenced matter. Please file the original and appropriate copies and return a file-stamped copy in the enclosed self-addressed envelope.

By copy of this letter, all counsel of record are receiving a copy of same.

Please do not hesitate to contact me if you have any questions.

Sincerely yours,

Allan G. King

AGK/cm

Enclosures

cc: J. Wilson Mitchell, Esq. (w/encl.) (CMRRR)
Lindsey Mussleman Davis, Esq. (w/encl.) (CMRRR)

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